

**United States Department of Labor  
Employees' Compensation Appeals Board**

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**J.H., Appellant**

**and**

**DEPARTMENT OF THE NAVY, NORFOLK  
NAVAL SHIPYARD, Portsmouth, VA, Employer**

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**Docket No. 17-0604  
Issued: July 7, 2017**

*Appearances:*  
*Appellant, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

CHRISTOPHER J. GODFREY, Chief Judge  
ALEC J. KOROMILAS, Alternate Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On January 23, 2017 appellant filed a timely appeal from a September 14, 2016 decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

**ISSUE**

The issue is whether appellant has more than seven percent permanent impairment of his right lower extremity, for which he previously received a schedule award.

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

## **FACTUAL HISTORY**

This case has previously been before the Board.<sup>2</sup> The facts of the case as presented in the prior appeal are incorporated herein by reference. The relevant facts are set forth below.

On November 6, 2012 appellant, then a 52-year-old marine machinery mechanic, filed a traumatic injury claim (Form CA-1) for a twisted right ankle due to stepping into a pothole and rail track on November 2, 2012.

By decision dated February 28, 2013, OWCP accepted appellant's claim for right ankle sprain. Appellant received intermittent payments of wage-loss compensation on the periodic compensation rolls from March 22, 2013 through May 2, 2014.

Appellant underwent an authorized arthroscopic debridement of the right ankle and chondropasty on July 10, 2013. He returned to light-duty work on September 4, 2013.

On November 5, 2014 OWCP proposed to terminate appellant's medical and wage-loss compensation benefits, finding that the weight of the medical evidence established no continuing residuals of his accepted work-related condition.<sup>3</sup>

On July 28, 2016 appellant requested a schedule award in a claim for compensation (Form CA 7).

By letter dated July 29, 2016, OWCP informed appellant of the evidence needed to establish entitlement to a schedule award. It afforded him 30 days to submit such evidence.

In a report submitted by appellant dated May 25, 2016, Dr. Arthur W. Wardell, a Board-certified orthopedic surgeon, provided a permanent impairment rating for appellant's right lower extremity based upon the sixth edition American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*). On examination he noted 0 degrees dorsiflexion, 20 degrees plantar flexion, inversion to 6 degrees, and eversion to 10 degrees. Dr. Wardell found that appellant had 7 percent permanent impairment of the lower extremity due to hind-foot stiffness and 7 percent impairment due to ankle motion impairment, for a total of 14 percent. He cited Table 16-20 and Table 16-22 of the A.M.A., *Guides* for calculating these percentages of impairment. Dr. Wardell noted a further seven percent permanent impairment due to ankle arthritis, which he calculated using Table 16-2. The final total permanent impairment rating provided by him for the right lower extremity was 21 percent.

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<sup>2</sup> Docket No. 15-1726 (issued January 19, 2016).

<sup>3</sup> By letter dated November 21, 2014, appellant responded to the proposal to terminate his medical and wage-loss compensation benefits. He argued that there was an unresolved conflict of medical opinion. By decision dated March 4, 2015, OWCP terminated appellant's medical and wage-loss compensation benefits effective March 4, 2015. Appellant filed a timely appeal to the Board on August 17, 2015. By decision dated January 19, 2016, the Board reversed the termination of appellant's compensation benefits, finding that OWCP had not met its burden of proof to terminate his benefits because there remained an unresolved conflict of medical opinion. *Id.*

OWCP forwarded the case record and a statement of accepted facts to a district medical adviser (DMA) on August 25, 2016. In a report dated September 12, 2016, the DMA calculated seven percent permanent impairment of the right lower extremity based on ankle sprain. He noted that his total permanent impairment of the right lower extremity differed from Dr. Wardell's because the hind-foot motion loss was not associated with appellant's ankle sprain and because ankle arthritis was not an accepted condition. Therefore, basing his calculation solely on Table 16-22 for appellant's ankle sprain, the DMA noted a mild motion deficit, corresponding to seven percent right lower extremity permanent impairment. He noted that appellant's date of maximum medical improvement was May 25, 2016.

By decision dated September 14, 2016, OWCP granted appellant a schedule award for seven percent permanent impairment of the right lower extremity. It found that the weight of the medical evidence rested with the DMA.

### **LEGAL PRECEDENT**

The schedule award provision of FECA<sup>4</sup> and its implementing federal regulations<sup>5</sup> set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss or loss of use, of scheduled members, functions and organs of the body. FECA, however, does not specify the manner by which the percentage loss of a member, function or organ shall be determined. To ensure consistent results and equal justice for all claimants under the law, good administrative practice requires the use of uniform standards applicable to all claimants.<sup>6</sup> The A.M.A., *Guides* has been adopted by the implementing regulations as the appropriate standard for evaluating schedule losses.<sup>7</sup> For decisions issued after May 1, 2009, the sixth edition is used to calculate schedule awards.<sup>8</sup> It is well established that in determining the amount of a schedule award for a member of the body that sustained an employment-related permanent impairment, preexisting impairments of the body are to be included.<sup>9</sup>

The sixth edition of the A.M.A., *Guides* provides a diagnosis-based method of evaluation utilizing the World Health Organization's International Classification of Functioning, Disability

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<sup>4</sup> 5 U.S.C. § 8107.

<sup>5</sup> 20 C.F.R. § 10.404.

<sup>6</sup> *Ausbon N. Johnson*, 50 ECAB 304, 311 (1999).

<sup>7</sup> *Id.*

<sup>8</sup> For new decisions issued after May 1, 2009, OWCP began using the sixth edition of the A.M.A., *Guides*. A.M.A., *Guides* (6<sup>th</sup> ed. 2009); Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 1 (January 2010); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Award and Permanent Disability Claims*, Chapter 2.808.5a (February 2013).

<sup>9</sup> See *Dale B. Larson*, 41 ECAB 481, 490 (1990); Federal (FECA) Procedure Manual, *id.* at Chapter 3.700.3.a.3 (January 2010). This portion of OWCP's procedure provides that the impairment rating of a given scheduled member should include any preexisting permanent impairment of the same member or function.

and Health (ICF).<sup>10</sup> Under the sixth edition, the evaluator identifies the impairment class for the diagnosed condition (CDX), which is then adjusted by grade modifiers based on Functional History (GMFH), Physical Examination (GMPE), and Clinical Studies (GMCS).<sup>11</sup> The net adjustment formula is (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX).<sup>12</sup>

OWCP procedures provide that, after obtaining all necessary medical evidence, the file should be routed to OWCP's medical adviser for an opinion concerning the nature and percentage of impairment in accordance with the A.M.A., *Guides* with the medical adviser providing rationale for the percentage of impairment specified.<sup>13</sup>

### ANALYSIS

The Board finds that appellant has not established greater than seven percent right lower extremity impairment. OWCP accepted that he sustained a right ankle sprain. Appellant submitted a report from Dr. Wardell, which calculated a total 21 percent impairment rating for his right lower extremity, based on adding 7 percent for ankle motion impairment, 7 percent for ankle arthritis, and 7 percent for hind-foot stiffness.

The Board has previously found that OWCP's procedures provide that impairment ratings for schedule awards should include those conditions accepted by OWCP as work related, and any preexisting permanent impairment of the same member or function. If the work-related injury has affected any residual usefulness in whole or in part, a schedule award may be appropriate.<sup>14</sup> Dr. Wardell did not explain whether appellant's ankle arthritis was preexisting, nor did he provide actual measurements of cartilage intervals such that any preexisting arthritis could be rated. The diagnosis of ankle arthritis is dependent on x-ray studies demonstrating a cartilage interval of three millimeters as well as mild osteophytes with impingement.<sup>15</sup> Finally, Dr. Wardell did not explain how appellant's hind foot stiffness was causally related to the accepted injury.<sup>16</sup> Therefore, his report did not support a finding of more than seven percent permanent impairment of the right lower extremity.

OWCP forwarded Dr. Wardell's report along with a statement of accepted facts to a DMA. The DMA calculated seven percent permanent impairment rating for appellant's right lower extremity, noting that the seven percent impairment rating for ankle motion impairment

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<sup>10</sup> A.M.A., *Guides* (6<sup>th</sup> ed. 2009), page 3, section 1.3, The International Classification of Functioning, Disability and Health (ICF): A Contemporary Model of Disablement.

<sup>11</sup> *Id.* at 383-419.

<sup>12</sup> *Id.* at 411.

<sup>13</sup> See *supra* note 7 at Chapter 2.808.6(f) (February 2013).

<sup>14</sup> *K.S.*, Docket No. 15-1082 (issued April 18, 2017). See also *supra* note 8.

<sup>15</sup> See *J.C.*, Docket No. 16-0156 (issued August 16, 2016).

<sup>16</sup> *Supra* note 13.

was appropriate. He based his calculation on Table 16-22 for appellant's ankle sprain.<sup>17</sup> The DMA properly found a mild motion deficit, based upon Dr. Wardell's findings of 0 degrees dorsiflexion, 20 degrees plantar flexion, inversion to 6 degrees, and eversion to 10 degrees corresponding to seven percent right lower extremity impairment rating. The Board finds that the DMA's rating represents the weight of medical opinion. The DMA explained the differences between his impairment rating calculations with citations to the A.M.A., *Guides*, and explained why his rating differed from Dr. Wardell's, noting the areas in which Dr. Wardell's reports did not comport with the A.M.A., *Guides*. When an attending physician's report does not comport with the A.M.A., *Guides*, OWCP may rely on the opinion of its medical adviser to apply the *Guides* to the findings of the attending physician.<sup>18</sup> Thus, OWCP properly relied on the DMA's final lower right extremity impairment rating of seven percent, based upon appellant's ankle motion impairment. There is no other medical evidence of record containing an impairment rating as calculated according to the A.M.A., *Guides*.

Therefore, the Board finds that appellant has no more than seven percent permanent impairment of his right lower extremity, for which he previously received a schedule award.

Appellant may request a schedule award or increased schedule award at any time based on evidence of a new exposure or medical evidence showing progression of an employment-related condition resulting in permanent impairment or increased impairment.

### **CONCLUSION**

The Board finds that appellant has no more than seven percent impairment of his right lower extremity, for which he received a schedule award.

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<sup>17</sup> *Supra* note 9 at page 549.

<sup>18</sup> *Linda Beale*, 57 ECAB 429 (2006).

**ORDER**

**IT IS HEREBY ORDERED THAT** the September 14, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 7, 2017  
Washington, DC

Christopher J. Godfrey, Chief Judge  
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge  
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge  
Employees' Compensation Appeals Board